

**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE CEMETERY AND FUNERAL BUREAU
STATE OF CALIFORNIA**

In the Matter of the Petition for Reduction of
Penalty By:

Case No.: A1 2013 161

OAH No.: 2013080372

ORLYN T. RILEY

FDR License No. 3054
EMB License No. 9202

Petitioner.

DECISION AFTER PETITION FOR REDUCTION OF PENALTY

This matter came before the Director of the Department of Consumer Affairs (Department) for the Cemetery and Funeral Bureau (Bureau) by submission of a Petition for Reduction of Penalty, dated February 28, 2018, by Petitioner Orlyn T. Riley. Petitioner seeks to have his probation terminated early. In accordance with Government Code section 11522, the parties were afforded an opportunity to submit written argument on or before June 14, 2018.

On June 5, 2018, written opposition to the Petition for Reduction of Penalty was filed by the Attorney General's Office. Petitioner's written argument in support of his petition was filed with the Bureau on June 10, 2018.

The Director, having reviewed and considered the parties' evidence and written argument, hereby denies the petition.

FACTUAL FINDINGS

License History

1. On June 4, 2008, the Bureau issued Funeral Director License Number FDR 3054 to the Petitioner. On June 30, 2017, Petitioner's Funeral Director License expired and has not been renewed.

2. On July 1, 2010, the Bureau issued Embalmer License Number EMB 9202 to the Petitioner. Petitioner's embalmer license is currently active, and will expire on July 31, 2018, unless renewed.

3. By way of the Director's adoption of the September 26, 2014, Proposed Decision and Order (Order), Petitioner's licenses were revoked under Business and Professions Code sections

490 and 7691, effective November 13, 2014. The revocation of Petitioner's licenses derived from his January 30, 2013, convictions for aggravated assault and spousal abuse, which were determined to be substantially related criminal convictions of a licensee. The Order placed the Petitioner on probation for five years subject to various terms and conditions, and granted the Petitioner probationary licenses for his Funeral Director's License and the Embalmer's License. Petitioner's probationary term is set to expire on November 12, 2019.

Petition for Early Termination of Probation

4. On February 28, 2018, the Bureau received from Petitioner a Petition for Reduction of Penalty. Petitioner did not attach any documentation in support of his rehabilitation with his petition. The petition requests in pertinent part, the following relief:

- a. Stop probation completely and all requirements and [redact] all mention of my psychiatric disorder which has been posted publicly for over 3 years now while [the] criminal court dismissed my felony charge in 3 years as promised a whole year ago.
- b. [Redact] all information regarding my psychiatric illness. Stop mandatory doctor evaluations and any chaperoning or logs for normal interaction to go as needed.
- c. Only [redact] all mention of my psychiatric illness [from the September 26, 2014 Decision and Order.]

5. By way of his June 10, 2018, written argument, Petitioner claims to be rehabilitated and to have taken his disciplinary probation seriously. His written argument also provides, in pertinent part, as follows:¹

According to several experts I have Bipolar 1 Disorder. I am like the 3 other versions of Bipolar but unique in a very special way. I have the worst of all the Bipolar diagnosis and I would like some respect for that fact... My illness has almost taken my own life several times and with true grit and chance I am here to write to you.

I went into my ex-girlfriend's house that fateful night to simply get my phone back, because I was self-employed and she disappeared with it for 3 days now a 4th, jeopardizing my trade embalming business. Never have I endangered another person's life... The circumstances stated in the Decision are not accurate and colorfully depict me as a savage lunatic out for blood. The truth, as God sees it, 1) she was not asleep when I found her sitting up in bed. 2) I never jumped on top of her, because I approached her bed and sat down next to her on her left side. 3) I asked for my phone back and she started to move away from me and I grabbed the front collar of her shirt and never strangled her like they do in the psychological thriller movies. 4) I let her go within 5 seconds of finding my phone on her nightstand and it takes longer than 5 seconds to propose a life threatening situation. It takes up to 7 minutes to kill by strangulation because that is when the brain is dead from hypoxia. It really wasn't that eventful except for the fact that I got my property back as I planned without the interference of the police so I thought.

6. Petitioner submitted a May 29, 2018, Order for Relief and Minute Order as exhibits to his June 10, 2018, written argument, demonstrating that his criminal convictions were dismissed

¹ Petitioner's written argument is set forth without edits for spelling, grammar, and punctuation.

pursuant to Penal Code section 1203.4.

7. Deputy Attorney General (DAG), Shannon M. Brubaker timely filed an Opposition to the Petition for Reduction of Penalty with the Bureau on June 5, 2018, recommending that Petitioner's request for penalty relief be denied in the interest of public safety.²

LEGAL CONCLUSIONS

Burden/Standard of Proof

1. Government Code section 11522 provides, in pertinent part, the following:

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. . . . The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement.

2. Business and Professions Code section 7601.1 states:

Protection of the public shall be the highest priority for the Cemetery and Funeral Bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

3. In a proceeding for the termination of probation, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and is entitled to have his license restored, and not on the Bureau to prove the contrary. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal. App. 3d 1392, 1398.) Petitioner carries the burden to establish by clear and convincing evidence that he is entitled to the requested relief. (*Ibid.*) "The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue." (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1086 (dis. opn. of Lucas, C.J.).) The more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be. (*In re Menna* (1995) 11 Cal.4th 975, 987; see *In re Nevill* (1985) 39 Cal.3d 729, 735; *Roth v. State Bar* (1953) 40 Cal.2d 307, 313; *In re Gossage* (2000) 23 Cal.4th 1080, 1096.)

- 4a. Petitioner applied for a reduction in penalty pursuant to Government Code section 11522. Nonetheless, the Bureau's regulations governing license reinstatement under section 11522 are instructive here. California Code of Regulations, Title 16, section 1253.5, subdivision (b) provides the following:

² Exhibit A, is hereby filed under seal in support of the Opposition to Petition for Reduction of Penalty. At the request of DAG Brubaker, the document will be withheld from public record and disclosure, but will be taken under consideration by the Director in rendering a final decision in this matter.

When considering a petition for reinstatement of a license under the provisions of Section 11522 of the Government Code, the bureau shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in Section 1253 of this article.

4b. The criteria specified in Title 16, section 1253 are:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.
- (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (d) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (e) Evidence, if any, of rehabilitation submitted by the applicant.

5. Petitioner's convictions are very serious and involved violence. However, Petitioner has complied with the terms and conditions of his disciplinary probation, has not committed any subsequent acts of violence, and claims to be rehabilitated. In addition, the record indicates that Petitioner's convictions were recently dismissed pursuant to Penal Code section 1203.4. (See Factual Finding 6.) The Director is mindful and acknowledges that Petitioner is making efforts and strides towards putting this most unpleasant episode behind him. Petitioner's actions are to be commended. On the other hand, since persons under the direct supervision of judicial or correctional authorities must behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage, supra*, at p. 1099.)

6a. Rehabilitation is not an event but rather a process. It is a concept that must be evaluated and assessed on multiple levels. To that end, what is not attached to Petitioner's request for penalty relief is also significant. Specifically, Petitioner did not submit professional or character reference letters with his petition demonstrating his changed behavior and reliability that would assist the Director in determining his rehabilitation. There is no written report from Petitioner's treating psychotherapist relating to the exploration of the reasons for the underlying misconduct, nor is there any showing that Petitioner has engaged in the very difficult but essential work leading to self-awareness. While Petitioner's volunteer work with the Wellness Center West program is applauded, it is no substitute for the requirement that Petitioner undergo intense exploration of his state of mind in psychotherapy.

6b. Furthermore, a condition precedent for establishing rehabilitation is a mature understanding of the harm done and remorse for one's actions. Quite simply, one must accept

responsibility for the misconduct and demonstrate an appreciation for why it is wrong. Petitioner's narrative, set forth in his written argument, leaves the Director less than convinced that he is truly remorseful. (See Factual Finding 5.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal. 3d. 933, 940.) Indeed, Petitioner characterizes his former girlfriend, the victim of his violent acts, as "horrible," "vengeful," and the cause of his July 31, 2012 arrest. Thus, Petitioner attempts to place blame for his criminal convictions elsewhere, and has failed to demonstrate a true appreciation for the gravity of his prior violent acts.

7. Accordingly, Petitioner has failed to exhibit remorse and take responsibility for his misconduct that led to the revocation of his licenses. He has continually stressed how burdensome and inconvenient his probation is to him. Nonetheless, the opportunity at a second chance has long and deep roots in our culture and law. But the opportunity at a second chance does not come automatically, simply earned with the passage of time. Rather, we must all earn our second chance. This is the core notion of rehabilitation. While Petitioner's probation may be burdensome to him, the Bureau's paramount duty is the protection of the public. In the instant matter, Petitioner has failed to meet his evidentiary burden by clear and convincing evidence, and cause exists to deny the petition.

ORDER

The Petition for Reduction of Penalty filed by Petitioner Orlyn T. Riley, is hereby DENIED.

This decision shall become effective on August 1, 2018.

DATED: July 2, 2018.



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director, Legal Affairs
Department of Consumer Affairs